

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 16 MAY 2006

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| Applicant's or agent's file reference vv 2971/254/PCT | FOR FURTHER ACTION | | See Form PCT/IPEA/416 |
| International application No. PCT/EP2005/000687 | International filing date (day/month/year) 25.01.2005 | Priority date (day/month/year) 06.02.2004 | |
| International Patent Classification (IPC) or national classification and IPC INV. A23L2/08 A23N1/00 A23L1/212 | | | |
| Applicant ZANICHELLI, RICERCHE S.R.L. | | | |
| <p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> | | | |
| <p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input checked="" type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p> | | | |
| Date of submission of the demand 27.07.2005 | | Date of completion of this report 15.05.2006 | |
| Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465 | | Authorized officer Rinaldi, F Telephone No. +49 89 2399- | |



**INTERNATIONAL PRELIMINARY REPORT
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International application No.
PCT/EP2005/000687

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-18 as originally filed

Claims, Numbers

1-27 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|------|
| Novelty (N) | Yes: Claims | |
| | No: Claims | 1-27 |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1-27 |
| Industrial applicability (IA) | Yes: Claims | 1-27 |
| | No: Claims | |

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

and /or

2. Non-written disclosures (Rule 70.9)

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V.

1 Reference is made to the following document:

D1: US 2003/224100 A1 (DE LA CUADRA RODRIGO ET AL) 4 December 2003 (2003-12-04)

D2: DATABASE FSTA [Online] INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANKFURT-MAIN, DE; 1975, YOUSSEF M M ET AL: "Studies on the quality of tomato concentrate produced in Egypt." XP002327482 Database accession no. 78-1-07-j0848

D3: WO 03/024243 A (CONAGRA GROCERY PRODUCTS COMPANY, ET AL; SUCCAR, JORGE, K; TISHINSKI,) 27 March 2003 (2003-03-27)

D4: WO 97/48287 A (LYCORED NATURAL PRODUCTS INDUSTRIES LTD) 24 December 1997 (1997-12-24)

D5: US-A-1 874 181 (GAVIN WILLIAM H) 30 August 1932 (1932-08-30)

D6: US-A-4 840 119 (CALDI ET AL) 20 June 1989 (1989-06-20)

(for details on relevant passages, please see ISR).

Novelty

2 The subject matter of

- independent product claims 1 and 8
- independent use claim 14
- independent process claim 15

does not fulfill the requirements of Art.33(2) PCT (for details on relevant passages, please refer to ISR).

- 2.1 D1 divulges pre-treating tomatoes (hot break), removing insoluble parts and centrifugation of the tomatoes, separating pulp from serum (about 85%), concentrating the serum and adding said concentrated serum to the pulp in order to obtain a tomato paste with a ratio of soluble to insoluble tomato solids of 66:33. In example 1 a tomato product is described containing about 8% water (5% from the thick stream and 3% from the thin stream) and having a ratio of soluble to insoluble tomato solids of 40:60. To these products oil and other ingredients such as cheese are added to prepare food products. The addition of starches and gums is possible but not necessary.
- 2.2 D2 discloses tomato products containing a ratio of soluble to insoluble tomato solids

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of 24.96:11.1 (i.e. of about 70:30). Due to the viscosity it is considered to be intrinsically disclosed that the water content is >1%.

Inventive step

- 3 D3 discloses separating serum from tomato pulp, concentrating the serum, adding it to the pulp and performing an additional concentration step. The concentrated product can thus be adjusted to any desired ratio of insoluble to soluble tomato solids and to any dry content percentages. In other words, starting from D1 or D3 it is obvious for the one skilled in the art to provide tomato products having the desired composition of moisture content and the desired ratio of soluble to insoluble tomato solids (Art.33(3) PCT). It is furthermore obvious that only by application of a gentle manufacturing process delicate tomato compounds can be maintained in the processed product (see additionally teaching of D4-D6).

Re Item VI

Certain documents cited

Certain published documents

| Application No Patent No | Publication date (day/month/year) | Filing date (day/month/year) | Priority date (valid claim) (day/month/year) |
|-----------------------------|--------------------------------------|---------------------------------|---|
| WO2004/017759 | 04.03.2004 | 05.08.2003 | 08.08.2002 |

Re Item VII

Certain defects in the international application

Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D3 is not mentioned in the description, nor are these documents identified therein.

Re Item VIII

Certain observations on the international application

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Clarity

- 1 The following clarity deficiencies were noted (Art.6 PCT).
- 1.1 Expressions such as "preferably" or "optionally" do not have a limiting effect on the scope of the claim. Preferable or optional features are therefore regarded to be non-essential features that need not be considered when establishing the scope of the claim.
- 1.2 The expression "slow stirring" (claim 15) is vague and cannot be used a distinguishing feature vis-à-vis the prior art (see also PCT-Guideline 5.34).
- 1.3 The expression "in admixture" in present claim 5 is unclear. Whether the serum has been
 - added to a composition in order to obtain the product of claim 1 or
 - whether it can be added to the product of claim 1 to obtain further productsis not unambiguously derivable from the wording of said claim.